

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JOSIAH HUNTER,

Plaintiff,

v.

CITY OF FEDERAL WAY, FEDERAL WAY  
POLICE DEPARTMENT, FEDERAL WAY  
POLICE OFFICER KRIS DURRELL,  
FEDERAL WAY POLICE CHIEF ANDY J.  
HWANG, JOHN DOE AND JANE DOE  
OFFICERS,

Defendants.

NO. 2:16-cv-01445-MJP

AMENDED ~~PROPOSED~~ PRETRIAL  
ORDER

**JURISDICTION**

Jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1331 and 28 U.S.C. § 1367. The plaintiff is bringing a 42 U.S.C. § 1983 claim against defendant Kris Durell, as well as a companion assault claim against Officer Durell and his employer, the City of Federal Way.

**CLAIMS AND DEFENSES**

The plaintiff will pursue the following claims:

AMENDED PROPOSED PRETRIAL ORDER  
(2:16-cv-01445-MJP) - 1

**CHRISTIE LAW GROUP, PLLC**  
2100 WESTLAKE AVENUE N., SUITE 206  
SEATTLE, WA 98109  
206-957-9669

1. A claim against Officer Kris Durell and the City of Federal Way under 42 U.S.C. § 1983 for excessive force in violation of plaintiff's Fourth Amendment rights<sup>1</sup>; and

2. A state law claim for assault against Officer Durell for his conduct and against the City of Federal Way under a theory of vicarious liability.

The defendants will assert the following affirmative defenses:

1. Officer Durell is entitled to qualified immunity; and

3. Plaintiff failed to mitigate his damages.

## ADMITTED FACTS

The following facts are admitted by the parties:

A. Josiah Hunter and Junior Beausilien were at the AM/PM located on 320th and Pacific Highway South on September 14, 2014.

B. Josiah Hunter and Junior Beausilien either heard or witnessed a near head-on collision. Josiah Hunter and Junior Beausilien went to the scene of the accident.

C. A group of civilians began to congregate near the scene of the accident near the site of the collision, which included Josiah Hunter and Junior Beausilien.

D. Mr. Hunter and Mr. Beausilien were at the scene of the collision before any police officers.

E. Officer Durell was the first police officer to respond to the scene of the accident.

F. It appeared that Travis Wells was intoxicated.

<sup>1</sup> Defendants object to any assertion that there is a pending 42 U.S.C. § 1983 claim against the City of Federal Way. The Court previously dismissed that claim at summary judgment.

1 G. Mr. Hunter and Mr. Beausilien told Officer Durell they were not involved in the  
2 accident.

3 H. Mr. Hunter picked Mr. Wells' wallet up off the ground during the course of Mr.  
4 Wells' arrest by Officer Durell, and returned the wallet back to the ground when so ordered by  
5 Officer Durell.

6 **ISSUES OF LAW**

7 The following are the issues of law to be determined by the Court:

8 1. Did Officer Kris Durell use excessive force in violation of Mr. Hunter's Fourth  
9 Amendment rights when he used a control hold (LVNR) during the course of Mr. Hunter's lawful  
10 arrest?

11 2. If Officer Durell is liable for excessive force under 42 U.S.C. § 1983, is Officer Durell  
12 entitled to qualified immunity?

13 **EXPERT WITNESES**

14 a) The parties do not believe that a limitation on the number of expert witnesses is  
15 necessary.

16 b) The names and addresses of the expert witnesses to be used by each party at trial and  
17 the issues upon which each will testify are:

18 **On behalf of the plaintiff:**

19 (1) Gregory G. Gilbertson  
20 4722 Snow Grass Place NE  
Olympia, WA 98516-6258

21 Mr. Gilbertson is a police trainer, private investigator and professor, and he has been  
22 offered to testify regarding police practices and procedures pertaining and the reasonableness of  
the force used by Officer Durell to effect Mr. Hunter's arrest.

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- 1           4.     Officer Kris Durell (will possibly testify)  
2                 c/o Christie Law Group, PLLC  
3                 21000 Westlake Ave. N., Ste. 206  
               Seattle, WA 98109  
               206-957-9669

4           Officer Kris Durrell is a defendant in this case. He has knowledge of the facts and  
5     circumstances leading up to Mr. Hunter's arrest and about the force used during the course of that  
   arrest.

- 6           5.     Officer Charlie Hinckle (will possibly testify)  
7                 c/o Christie Law Group, PLLC  
8                 2100 Westlake Ave. N., Ste 206  
               Seattle, WA 98109  
               (206) 957-9669

9           Officer Hinckle was a responding officer. He has knowledge of the facts and circumstances  
10    leading up to and during Mr. Hunter's arrest.

- 11          6.     Officer Keith Schmidt (will possibly testify)  
12                 c/o Christie Law Group, PLLC  
               2100 Westlake Ave. N., Ste 206  
               Seattle, WA 98109  
               (206) 957-9669

13          Officer Schmidt was a responding officer. He has knowledge of the facts and  
14    circumstances leading up to and during Mr. Hunter's arrest.

- 15          7.     Officer Matt Novak (will possibly testify)  
16                 c/o Christie Law Group, PLLC  
17                 2100 Westlake Ave. N., Ste 206  
               Seattle, WA 98109  
               (206) 957-9669

18          Officer Novak was a responding officer. He has knowledge of the facts and circumstances  
19    leading up to and during Mr. Hunter's arrest.

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1       8.     Janet Stewart (will possibly testify)  
2             2716 S 275 place  
3             Federal Way, WA 98003  
4             253-946-4306

5             Ms. Stewart was listed as a witness in a police report and may have information related to  
6     Mr. Hunter's claims.

7       9.     Dennis Watson (will possibly testify)  
8             32219 8 Avenue South  
9             Federal Way, WA 98003  
10            253-202-6335

11            Mr. Watson is listed as a witness in a police report and may have information related to  
12   Mr. Hunter's claims.

13       10.    Andrew Krahn (will possibly testify)  
14             17932 Jordan St SW  
15             Rochester, WA 98579

16            Mr. Krahn is listed as a witness in a police report and may have information related to Mr.  
17   Hunter's claims.

18       11.    Thomas Hart (will possibly testify)  
19             25803 19th Av South  
20             Des Moines, WA 98158  
21             (253) 394-1001

22            Mr. Krahn is listed as a witness in a police report and may have information related to Mr.  
   Hunter's claims.

      12.     Sanetta Hunter (will testify)  
          c/o James Bible Law Group  
          14205 SE 36th Street Suite 100  
          Bellevue WA 98006

      Sannetta Hunter is the mother of the plaintiff and may have information related to his  
   claimed damages.

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- 1           13.    Corazon Pajarillo (will possibly testify)  
2                   31223 20th Avenue South # B103  
3                   Federal Way Washington

4           Plaintiff intends to call Ms. Pajarillo to testify about her communications with Officer  
5           Schmidt before Mr. Hunter's arrest.

- 6           14.    Michael Anderson (may possibly testify)  
7                   5119 N. Shirley Street  
8                   Ruston, Washington

9           Plaintiff intends to call Mr. Anderson to testify about his observations at the scene of the  
10           car accident and his observations of Josiah Hunter and Junior Beausilien.

11           **On behalf of the defendants:**

12           The defendants anticipate calling the following witnesses at trial, all of which have been  
13           previously identified above:

- 14           1.    Josiah Hunter (may testify for the defense)  
15           2.    Junior Beausilien (may testify for the defense)  
16           3.    Officer Kris Durell (will testify)  
17           4.    Officer Keith Schmidt (will testify)  
18           5.    Officer Charlie Hinckle (will testify)  
19           6.    Officer Matt Novak (may possibly testify)  
20           7.    Michael Anderson (may possibly testify)

21           The defendants may also call the following witness:

- 22           8.    Chief Andy Hwang (may possibly testify)  
                  c/o Christie Law Group, PLLC  
                  21000 Westlake Avenue N., Ste. 206  
                  Seattle, WA 98109  
                  206-957-9669

          Chief Hwang is the representative for the City of Federal Way and plans to sit at counsel  
table through trial. He may be called to testify regarding the Federal Way Police Department's

1 policies, practices, and procedures, and training, if necessary.

2 **EXHIBITS**

3 **(a) Admissibility stipulated:**

4 **Plaintiff's Exhibits**

Ex. No.	Bates Number	Document
1*	001088-001093	Officer Kris Durell's Police Report
2*	001096-001098	Officer Charlie Hinckle's Police Report
6*	001094-001096	Officer Keith Schmidt's Police Report
8A	001526	Car Accident Photograph
8B	001527	Car Accident Photograph
8C	001528	Car Accident Photograph
8D	001529	Car Accident Photograph
8E	001530	Car Accident Photograph
8F	001531	Car Accident Photograph
8G	001532	Car Accident Photograph
8H	001533	Car Accident Photograph
8I	001534	Car Accident Photograph
8J	001535	Car Accident Photograph
8K	001536	Car Accident Photograph
8L	001537	Car Accident Photograph
8M	001538	Car Accident Photograph
8N	001339	Car Accident Photograph
8O	001540	Car Accident Photograph
8P	001541	Car Accident Photograph
8Q	001542	Car Accident Photograph
8R	001543	Car Accident Photograph
8S	001544	Car Accident Photograph
8T	001545	Car Accident Photograph
8U	001546	Car Accident Photograph
8V	001547	Car Accident Photograph
8W	001548	Car Accident Photograph
8X	001549	Car Accident Photograph
10	B001722	Video of the Accident
14*	B001751-B001757	DUI Arrest Report
15*	001104-001105	Use of Force Review

\* The parties agree that these police reports and the Use of Force Review form should be pre-



marked and included in the exhibit notebooks for ease of reference at trial, either as writings used to refresh recollection or documents available for impeachment purposes. The parties also agree that these documents should not be offered into evidence or submitted to the jury for their consideration at deliberation. If a party feels differently at trial, the exhibit should be treated as one with admissibility disputed.

**Defendants' exhibits:**

Ex. No.	Bates Number	Document
100	001101-001103	September 14, 2014 CAD Report
101	001722	Aerial Image of Intersection
102	001723	Close-Up Aerial Image of Intersection
103	001724	Angled Image of Intersection
104	001725	Image of AM/PM
105	HUNTER 000002	Josiah Hunter's September 2014 Phone Records
106	Hunter, Deposition Exhibit No. 2	Aerial Photograph of the Scene with markings

**(b) Authenticity stipulated, admissibility disputed:**

**Plaintiff's Exhibits**

Ex. No.	Bates Number	Document
3	001099-001100	Corazon Pajarillo's October 20, 2014 Statement
4	B001761-B001762	Vehicle Report
5	B01723-B001725	Federal Way Municipal Court First Amended Complaint. Count I, II, and III
7	B001726-B001728	Commander Casey Jones' November 7, 2014 Memorandum
9A	B001720	Aerial Photograph of the Scene
9B	B001721	Aerial Photograph of the Scene
11	B01729-001747	Defendant's Objections, Answers, and Responses to Plaintiff's Interrogatories and Requests for Production
12	B001748-001749	Michael Anderson's September 14, 2014 Statement
13	B001750	Court Order dismissing Mr. Hunter's Criminal Charges
16	B001758	Notice of Trespass - Hunter
17	001759	Notice of Trespass - Beausilien

**(c) Authenticity and admissibility disputed:**

None.

1 **DEPOSITION EXCERPTS**

2 Pursuant to LCR 32(e), the parties submit the attached deposition designations of plaintiff  
3 Josiah Hunter and defendant Kris Durell and the related objections and responses.

4 **ACTION BY THE COURT**

5 (a) This case is scheduled for trial before a jury on July 9, 2018 at the United States  
6 District Court for the Western District of Washington at Seattle.

7 (b) Trial briefs shall be submitted to the Court on or before Wednesday, June 27, 2018.

8 (c) Jury instructions requested by either party shall be submitted to the Court on or  
9 before Wednesday, June 27, 2018. Suggested questions of either party to be asked of the jury by  
10 the Court on voir dire shall be submitted to the Court on or before Wednesday, June 27, 2018.

11 This Order has been approved by the parties as evidenced by the signatures of their counsel.  
12 This Order shall control the subsequent course of the action unless modified by a subsequent order.  
13 This Order shall not be amended except by order of the Court pursuant to agreement of the parties  
14 or to prevent manifest injustice.

15 DATED this 6 day of July, 2018.

16   
17 HON. MARSHA J. PECHMAN  
18 U.S. DISTRICT JUDGE  
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1 Respectfully submitted,

2 CHRISTIE LAW GROUP, PLLC

3  
4 BY: /s/ Ann E. Trivett  
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6 Attorney for Defendants  
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8 Seattle, WA 98109  
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10 Email: ann@christielawgroup.com

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15 Bellevue, WA 98006  
16 Email: jbiblesblaw@gmail.com  
17 Attorney for Plaintiff

18 BY: /s/ Jesse Valdez  
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21 600 108<sup>th</sup> Avenue NE, Suite 347  
22 Bellevue, WA 98004  
Email: jess@valdezlehman.com  
Attorney for Plaintiff

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